

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Brendan Dassey _____, Petitioner,

Full Name (under which you were convicted)

00516985

Prisoner Number

Green Bay Correctional Institution

Place of Confinement

Docket No. 14-cv-1310

(to be supplied by Clerk)

vs.

Brian Foster _____, Respondent.

Authorized Person Having Custody of Petitioner

**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY**

Caution: THIS IS NOT THE FORM TO BE USED, IF YOU CLAIM THAT YOUR FEDERAL SENTENCE OR CONVICTION IS UNLAWFUL, OR IF YOU ARE A PRETRIAL DETAINEE CHALLENGING YOUR PRECONVICTION CUSTODY, A FEDERAL PRISONER CHALLENGING THE EXECUTION OF YOUR SENTENCE OR AN ACTION TAKEN BY THE BUREAU OF PRISONS, OR A PERSON IN CUSTODY CHALLENGING AN IMMIGRATION-RELATED ORDER.

I. SUBJECT OF THIS PETITION

- A. Name and location of the state court that entered the judgment of conviction which you are challenging

Manitowoc County Circuit Court

1010 S. 8th Street

Manitowoc, WI

- B. Criminal docket or case number **2006CF000088**

- C. Date of the judgment of conviction **April 25, 2007**

- D. Date of sentencing **August 2, 2007**

- E. Length of sentence **Life imprisonment, eligible for extended supervision in 2048**

- F. In this case, were you convicted on more than one count or of more than one crime?

Yes No

- G. Identify all crimes of which you were convicted and sentenced in this case

Party to first-degree intentional homicide

Party to mutilating a corpse

Party to second-degree sexual assault/use of force

- H. What was your plea? (Check one)

Not guilty Guilty Insanity plea Nolo contendere (no contest)

If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?

- I. If you went to trial, what kind of trial did you have? (Check one)

Jury Judge only

SUBJECT OF THIS PETITION - continued

J. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes No

If yes, state the type(s) of hearing or proceeding

Testified at trial

II. DIRECT STATE APPEAL OF CONVICTION

A. Did you appeal from the judgment of conviction?

Yes No

If yes, attach the decision(s) that resolved your appeal and answer the following questions:

1. Date of filing appeal **November 29, 2011**

2. Grounds raised **1) Ineffective assistance of counsel related to pre-trial attorney's breach of duty of loyalty**

2) Ineffective assistance of counsel related to trial attorney's failure to introduce evidence of confession's falsity

3) Voluntariness of confession

4) Request for discretionary reversal in the interests of justice

3. Result **Conviction affirmed**

4. Date **January 30, 2013**

B. Did you seek further review by the highest state court?

Yes No

If yes, attach the decision(s) that resolved your petition for review and answer the following questions:

1. Date of filing of petition for review **February 21, 2013**

2. Grounds raised **1) Ineffective assistance of counsel related to pre-trial attorney's breach of duty of loyalty**

2) Voluntariness of confession

3. Result **Petition for review denied**

4. Date **August 1, 2013**

DIRECT STATE APPEAL OF CONVICTION - *continued*

C. Did you file a petition for certiorari in the United States Supreme Court?

Yes No

If yes, attach the decision(s) that resolved your petition for certiorari and answer the following questions:

1. Date of filing petition for certiorari _____

2. Grounds raised _____

3. Result _____

4. Date _____

III. STATE POST-CONVICTION RELIEF OTHER THAN DIRECT APPEAL

A. Other than the appeals listed above in Section II, have you previously filed any other state petitions, applications, or motions concerning this state judgment of conviction?

Yes No

If yes, attach the decision(s) that resolved your application for state post-conviction relief and answer the following questions:

1. Name of court _____

2. Docket or case number _____

3. Date of filing _____

4. Type of petition, application, or motion filed _____

5. Grounds raised _____

6. Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

7. Result _____

STATE POST-CONVICTION RELIEF OTHER THAN DIRECT APPEAL- continued

8. Date _____

9. Did you appeal to the highest state court having jurisdiction over the action taken on your first state petition, application, or motion?

Yes No

B. If you filed a second petition, application, or motion, attach the decision and answer the following questions:

1. Name of court _____

2. Docket or case number _____

3. Date of filing _____

4. Type of petition, application, or motion filed _____

5. Grounds raised _____

6. Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

7. Result _____

8. Date _____

9. Did you appeal to the highest state court having jurisdiction over the action taken on your second state petition, application, or motion?

Yes No

C. If you filed a third petition, application, or motion, attach the decision and answer the following questions:

1. Name of court _____

2. Docket or case number _____

3. Date of filing _____

STATE POST-CONVICTION RELIEF OTHER THAN DIRECT APPEAL- continued

4. Type of petition, application or motion filed _____

5. Grounds raised _____

6. Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

7. Result _____

8. Date _____

9. Did you appeal to the highest state court having jurisdiction over the action taken on your third state petition, application, or motion?

Yes No

IV. GROUNDS FOR RELIEF

For this petition, state **every** ground supporting your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court.

Ground One _____ Ineffective assistance of counsel due to pre-trial attorney's breach of the duty of loyalty under the Sixth Amendment to the United States Constitution _____

Supporting FACTS (*Briefly summarize the facts without citing cases or law.*)

Sixteen-year-old Brendan consistently told his counsel that he was innocent and had falsely confessed to police. Because he thought Brendan should plead guilty, however, counsel directed his private investigator to visit Brendan in jail and compel him to confess. Counsel made these plans despite earlier e-mails in which the investigator described Brendan's family as "where the devil resides in comfort"

GROUND FOR RELIEF - continued

and stated "This is a one branch family tree. Cut this tree down. We need to end the gene pool here." The investigator did visit Brendan in prison and, with videocamera rolling, falsely told Brendan that he failed a polygraph; that he would get no help from his lawyer unless he confessed; and would get life in prison unless he confessed. He also falsely told Brendan that he would receive a twenty-year sentence if he did confess -- a made-up number, since no plea offer was on the table. Brendan eventually did confess, at which point counsel arranged for Brendan to undergo a second police interrogation the following day. No protections were in place and counsel did not attend the second police interrogation. Evidence generated as a result of these actions was introduced at trial.

If you did not exhaust your state remedies on Ground One, explain why.

Ground Two **Voluntariness of Brendan's March 1, 2006 confession to police under the Fifth Amendment to the United States Constitution**

Supporting FACTS (*Briefly summarize the facts without citing cases or law.*)

Brendan was sixteen years old when he was interrogated by police on videotape on March 1, 2006. His I.Q. was 74; he was in special education classes; psychological tests indicated that he was highly suggestible; and he had no criminal or juvenile record. His interrogation on March 1 was the fourth time police had questioned him in 48 hours. No interested adult was present; instead, police had told him earlier that "we're cops...but I'm not right now. I'm a father that has a kid your age." They also made 21 promises of leniency on March 1, including that if Brendan made "statements...against your own interest," then "I'm thinkin' you're all right" and that "honesty is the only thing that will set you free." When Brendan eventually agreed to confess, interrogators had to feed him even the most basic facts about the crime, including the manner of death -- all on videotape. After

GROUNDS FOR RELIEF - *continued*

confessing to rape and murder, Brendan asked when he would be returned to school in reliance on his interrogators' promises; instead, he was arrested. Despite his immediate recantation, the March 1 confession went on to become the centerpiece of the State's evidence at trial.

If you did not exhaust your state remedies on Ground Two, explain why.

Ground Three

Supporting FACTS (*Briefly summarize the facts without citing cases or law.*)

If you did not exhaust your state remedies on Ground Three, explain why.

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GROUND FOR RELIEF - *continued*

Ground Four _____

Supporting FACTS (*Briefly summarize the facts without citing cases or law.*)

If you did not exhaust your state remedies on Ground Four, explain why.

V. PRIOR FEDERAL CHALLENGES

- A. Have you previously filed any type of petition, application, or motion in a federal court regarding the state conviction that you are challenging in this petition?

Yes No

If yes, attach the decision(s) that resolved your prior federal court challenge and answer the following questions:

1. Name of court

PRIOR FEDERAL CHALLENGES - *continued*

2. Docket or case number _____

3. Date of filing _____

4. Type of petition, application, or motion filed _____

5. Grounds raised _____

6. Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

7. Result _____

8. Date _____

9. Did you appeal the action taken on your first federal petition, application, or motion to a federal court of appeals?

Yes No

If yes, attach the decision(s) that resolved your appeal and answer the following questions:

a. Name of court _____

b. Docket or case number _____

c. Date of filing _____

d. Type of petition, application, or motion filed _____

e. Grounds raised _____

PRIOR FEDERAL CHALLENGES - *continued*

f. Result _____

g. Date _____

B. Did you file a petition for certiorari in the United States Supreme Court?

Yes No

If yes, attach the decision(s) that resolved your petition for certiorari and answer the following questions:

1. Date of filing petition for certiorari _____

2. Grounds raised _____

3. Result _____

4. Date _____

VI. REPRESENTATION

A. Give the name and address of each attorney who represented you in the following:

1. At preliminary hearing Ralph Sczygelski (Sczygelski Law Firm LLC,
11331 S. 8th Street, Manitowoc, WI 54220)

2. At arraignment and plea hearing Len Kachinsky (Sisson & Kachinsky Law Offices,
Zuelke Building, 103 W. College Ave., Suite 1010, Appleton, WI 54911)

3. At trial Mark Fremgen (Jefferson County Office of Family Court Commissioner, 311 S. Center Ave.
#218, Jefferson, WI 53549) and Ray Edelstein (Edelstein Law LLC, 204 Church Ave., Oshkosh, WI 54901)

4. At sentencing Mark Fremgen (Jefferson County Office of Family Court Commissioner, 311 S. Center Ave.
#218, Jefferson, WI 53549) and Ray Edelstein (Edelstein Law LLC, 204 Church Ave., Oshkosh, WI 54901)

5. On direct appeal Laura Nirider, Steven Drizin, et al. (Bluhm Legal Clinic, Northwestern Univ. School of Law,
375 E. Chicago Ave., Chicago, IL 60611) and Robert Dvorak (Halling & Cayo, 320 E. Buffalo St., Milwaukee, WI 53202)

REPRESENTATION - continued

6. In any state post-conviction proceeding _____
Laura Nirider & Steven Drizin (Bluhm Legal Clinic, Northwestern Univ. School of Law,
375 E. Chicago Ave., Chicago, IL 60611) and Robert Dvorak (Halling & Cayo, 320 E. Buffalo St., Milwaukee, WI 53202)

7. On appeal from any ruling against you in a state post-conviction proceeding _____
Laura Nirider & Steven Drizin (Bluhm Legal Clinic, Northwestern Univ. School of Law,
375 E. Chicago Ave., Chicago, IL 60611) and Robert Dvorak (Halling & Cayo, 320 E. Buffalo St., Milwaukee, WI 53202)

VII. REQUEST FOR RELIEF

State exactly what you want the court to do for you.

Issue a writ of habeas corpus vacating Brendan Dassey's convictions
and ordering the State of Wisconsin to release him from custody or,
in the alternative, to retry him.

VIII. DECLARATION UNDER PENALTY OF PERJURY

I, the undersigned, hereby declare under penalty of perjury that the foregoing information is true and correct.

Signed this 20th day of October, 20 14.

Signature of Petitioner

Laura H. Nirider
(Signature of lawyer, if any)

If you are signing the petition and are not the petitioner, state your relationship to the petitioner and explain why the petitioner is not signing this petition.

Laura H. Nirider is counsel for Brendan Dassey and is authorized
to sign this petition on his behalf.

IX. CERTIFICATE OF INMATE MAILING - *Optional*

If you deposit your petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in your prison/institutional/jail mailing system and attach first-class postage pre-paid, and complete and sign this statement, you will establish the filing date as the date of deposit in that mailing system.

I, the undersigned, hereby declare under penalty of perjury that I placed this petition for a writ of habeas corpus under 28 U.S.C. § 2254 in the prison/institutional/jail mailing system with prepaid, first-class postage on _____.
(month, day, year)

Signed this _____ day of _____, 20 _____.

Signature of Petitioner